

(3) From the day following the date of discontinuance of payments to the disqualified person, subject to payments made to that person over the same period if evidence of income is received within 1 year after date of request; otherwise payments may not be made for any period prior to the date of receipt of an informal claim.

(4) The income limitation applicable to eligible persons will be that which would apply if the imprisoned person did not exist.

(c) *Resumption of pension upon release from incarceration.* Pension will be resumed as of the day of release if notice (which constitutes an informal claim) is received within 1 year following release; otherwise resumption will be effective the date of receipt of such notice. Where an award or increased award was made to any other payee based upon the disqualification of the veteran, surviving spouse, or child while in prison, such award will be reduced or discontinued as of date of last payment and pension will be resumed to the released prisoner at a rate which will be the difference, if any, between the total pension payable and the amount which was paid to the other person or persons through the date of last payment and thereafter the full rate.

(d) *Veteran entitled to compensation.* If an imprisoned veteran is entitled to a lesser rate of disability compensation, it shall be awarded as of the 61st day of imprisonment in lieu of the pension the veteran was receiving if the veteran has neither spouse nor child. If the veteran has a spouse or a child, compensation will be awarded only after the veteran has been furnished an explanation of the effect of electing compensation on the amount available for apportionment. If the veteran then requests compensation, it shall be awarded from the date veteran requests the Department of Veterans Affairs to take such action.

(e) *Fugitive felons.* (1) Pension is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Pension or death pension is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term *fugitive felon* means a person who is a fugitive by reason of:

(i) Fleeing to avoid prosecution, or custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(3) For purposes of paragraph (e) of this section, the term *felony* includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(4) For purposes of paragraph (e) of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran.

(Authority: 38 U.S.C. 501(a), 5313, 5313B)

[26 FR 1601, Feb. 24, 1961, as amended at 40 FR 6971, Feb. 18, 1975; 40 FR 22254, May 22, 1975; 44 FR 45943, Aug. 6, 1979; 46 FR 47543, Sept. 29, 1981; 62 FR 5529, Feb. 6, 1997; 68 FR 34543, June 10, 2003]

### §3.667 School attendance.

(a) *General.* (1) Pension or compensation may be paid from a child's 18th birthday based upon school attendance if the child was at that time pursuing a course of instruction at an approved educational institution and a claim for such benefits is filed within 1 year from the child's 18th birthday.

(2) Pension or compensation based upon a course of instruction at an approved educational institution which was begun after a child's 18th birthday may be paid from the commencement of the course if a claim is filed within 1 year from that date.

(3) An initial award of DIC (dependency and indemnity compensation) to a child in the child's own right is payable from the first day of the month in which the child attains age 18 if the child was pursuing a course of instruction at an approved educational institution on the child's 18th birthday, and if a claim for benefits is filed within 1 year from the child's 18th birthday. In the case of a child who attains age 18 after September 30, 1981, if the child was, immediately before attaining age 18, counted under 38 U.S.C. 1311(b) for

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the purpose of determining the amount of DIC payable to the surviving spouse, the effective date of an award of DIC to the child shall be the date the child attains age 18 if a claim for DIC is filed within 1 year from that date.

(Authority: 38 U.S.C. 5110(e))

(4) An initial award of dependency and indemnity compensation to a child in its own right based upon a course of instruction at an approved educational institution which was begun after the child's 18th birthday may be paid from the first day of the month in which the course commenced if a claim is filed within 1 year from that date.

(Authority: 38 U.S.C. 5110(e))

(5) Where a child was receiving dependency and indemnity compensation in its own right prior to age 18, payments may be continued from the 18th birthday if the child was then attending an approved educational institution and evidence of such school attendance is received within 1 year from the 18th birthday. Where the child was receiving dependency and indemnity compensation in its own right prior to age 18 and was not attending an approved educational institution on the 18th birthday but commences attendance at an approved educational institution after the 18th birthday, payments may be resumed from the commencing date of the course if evidence of such school attendance is filed within 1 year from that date.

(b) *Vacation periods.* A child is considered to be in school during a vacation or other holiday period if he or she was attending an approved educational institution at the end of the preceding school term and resumes attendance, either in the same or a different approved educational institution, at the beginning of the next term. If an award has been made covering a vacation period, and the child fails to commence or resume school attendance, benefits will be terminated the date of last payment or the last day of the month preceding the date of failure to pursue the course, whichever is the earlier.

(c) *Ending dates.* Except as provided in paragraph (b) of this section, benefits may be authorized through the last

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day of the month in which a course was or will be completed.

(Authority: 38 U.S.C. 5112(b)(7))

(d) *Transfers to other schools.* When benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same approved educational institution or a course in a different approved educational institution, payments previously made will not be disturbed.

(e) *Accrued benefits only.* When a claim for accrued benefits is filed by or on behalf of a veteran's child over 18 but under 23 years of age, who was pursuing a course of instruction at the time of the payee's death and payment of accrued benefits only is involved, evidence of school attendance need not be confirmed by the school. When the payee's death occurred during a school vacation period, the requirements will be considered to have been met if the child was carried on the school rolls on the last day of the regular school term immediately preceding the date of the payee's death.

(Authority: 38 U.S.C. 5112(b)(7))

(f) *Nonduplication.* Pension, compensation or dependency and indemnity compensation may not be authorized:

(1) After a child has elected to receive educational assistance under 38 U.S.C. chapter 35 (see § 3.707 and § 21.3023 of this chapter); or

(2) Based on an educational program in a school where the child is wholly supported at the expense of the Federal Government, such as a service academy.

CROSS REFERENCE: Dependents' educational assistance. See § 3.707.

[26 FR 1601, Feb. 24, 1961, as amended at 30 FR 14983, Dec. 3, 1965; 32 FR 12114, Aug. 23, 1967; 34 FR 839, Jan. 18, 1969; 40 FR 22254, May 22, 1975; 47 FR 24552, June 7, 1982; 65 FR 12116, Mar. 8, 2000]

### § 3.668 [Reserved]

### § 3.669 Forfeiture.

(a) *General.* Upon receipt of notice from a Regional Counsel (or in cases